

**IN THE MATTER OF INTEREST ARBITRATION  
BETWEEN**

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<b>RICE MEMORIAL HOSPITAL, WILLMAR, MN)</b>  <b>“Employer or Hospital”</b>  <b>AND</b>  <b>MINNESOTA NURSES ASSOCIATION</b>  <b>“Union or MNA”</b>	<b>) BMS Case No. 06-HN-0986</b> <b>)</b> <b>) Issue: Interest Arbitration of</b> <b>Future Terms</b> <b>)</b> <b>) Hearing Site: Willmar, MN</b> <b>)</b> <b>) Hearing Date: 10/09/06</b> <b>)</b> <b>) Post-hearing Submissions:</b> <b>) (1) Data Corrections: 10/16/06</b> <b>) (2) Brief Date: 11/02/06</b> <b>) (3) Data Challenges: 11/09/06</b> <b>)</b> <b>) Award Date: 12/30/06</b> <b>)</b> <b>) Mario F. Bognanno, Arbitrator</b>
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**JURISDICTION**

The hearing in the above-captioned matter between Rice Memorial Hospital and the Minnesota Nurses Association was conducted on October 9, 2006, in Willmar, Minnesota pursuant to the Charitable Hospital Act, Minn. Stat. § 179.38.

Appearing through their designated representatives, the parties stipulated that the matter was properly before the undersigned for a final and binding determination, and they waived the “board of arbitrators” option under Minn. Stat. § 179.38. Both parties were given a full and fair opportunity to present their case. Witness testimony was sworn and cross-examined, and exhibits were introduced into the record. Following the submission of correspondence regarding data collection issues on October 16, 2006, the parties submitted post-hearing briefs

on November 2, 2006. In correspondence dated November 9, 2006, the Employer challenged the accuracy of a number of fact-based statements appearing in the Union's post-hearing brief. Subsequent to the receipt of this correspondence, the case record was closed and the matter under taken under consideration.

Interns Richard Dunn and Tony Orman attended the hearing under the auspices of the State of Minnesota, Bureau of Mediation Services' arbitrator-internship program. Both interns prepared mock drafts of this decision. However, the arbitrator of record wrote this decision and he is solely responsible for its content.

### **APPEARANCES**

#### **For the Employer:**

Frank J. Madden	Attorney-at-Law
Susan Hansen	Attorney-at-Law
Bill Fenske	Chief Financial Officer
Lawrence Massa	Chief Executive Officer
Dale Hustedt,	Associate Administrator

#### **For the Union:**

Phillip Finkelstein	Attorney-at-Law
John Lose	MNA Staff Specialist, Labor Relations
Maureen Kleckner,	MNA Specialist, Labor Relations
Keri Nelson	MNA Staff Specialist, Labor Relations
Beverly Marcus	Registered Nurse

**I. FACTS AND BACKGROUND**

Serving Willmar, MN and west-central Minnesota, Rice Memorial Hospital is a 136-bed, acute care facility that is owned by the City of Willmar, MN. The Hospital is governed by a board of directors, appointed by the mayor of Willmar, MN, and it employs 877 workers and 236 are nurses represented by the Minnesota Nurses Association. (Employer Exhibit 32). The Employer does not have the authority to levy taxes, and does not receive funds from the City of Willmar. The City guarantees the bonds financing the Hospital's current building project. (Employer Exhibits 7 and 8).

In 2005, the Employer's year-end expenses exceeded operating plus non-operating revenues by \$540,401. (Employer Exhibit 17). As part of its 2006 budget planning process, the Employer projected a financial loss of \$3,000,000. To balance its 2006 budget and avoid another year in the red, the Employer planned for and took affirmative steps to prospectively lift operating and non-operating revenues and reduce operating expenses. To reduce prospective costs, the Employer decided to let FTE headcounts fall and not to fund general wage increases for 2006. It also executed plans to cut costs by eliminating administrative overhead and raising "prices". The reasons for the Employer's financial difficulties include decreases in inpatient and outpatient revenues, admissions, patient days, hospice visits and 3<sup>rd</sup> party reimbursement levels, as well as anticipated but vastly increased depreciation and interest expenses

attached to contemporary investments in plant and equipment.<sup>1</sup> (Employer Exhibits 8 – 13 and 16).

Through August 31, 2006, the Employer's annualized year-end deficit is projected to be \$918,471, compared to the aforementioned 2005 deficit of \$540,397. (Employer Exhibit 14). Moreover, the Employer's operating margin (i.e., profit/loss ratio), while positive for the years 2000 through 2004, fell to -1.8% and -2.3% for 2005 and 2006 (through August 31st), respectively. (Employer Exhibit 22). Another indicator of financial difficulties is that through August 31, 2006, the Employer had enough unrestricted cash and investments on hand to cover 49-days of operating expenses, less depreciation and amortization. The comparable industry indicator is 180-days. (Employer Exhibit 15).

As the year 2006 unfolded, the Employer was managing its financial difficulties as planned, permitting FTE headcounts to fall through retirements and attrition and, except for step-increases, it froze wages and salaries for the entire workforce, union and non-union, and non-labor expenses and budgets were reduced, for example.<sup>2</sup> (Employer Exhibits 9, 11 and 35). On December 31, 2005, the parties' Collective Bargaining Agreement expired, and their attempt to renegotiate it failed. (Employer Exhibit and Union Tab – 2003-2005 Collective Bargaining Agreement). After only three (3) bargaining sessions, the parties reached an impasse, and the Commissioner of the Bureau of Mediation Services, State of Minnesota, proceeded to certify eleven (11) issues for binding interest

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<sup>1</sup> In October 2002, the Employer began a \$52 million expansion and renovation projects financed with 30-year bonds.

<sup>2</sup> 2006 step increase payments for eligible employees cost the Employer \$185,000. (Employer Exhibit 11).

arbitration pursuant to Minn. Stat. § 179.38.<sup>3</sup> (Employer Exhibits 2 – 6 and Union Tab – Issues). The issues certified for interest arbitration are as follows.

1. Duration
2. Wages
3. Health Insurance
4. On-Call Pay
5. Weekend Differential
6. Access to EST
7. Conversion of EST to PTO and EST Maximum
8. PTO Accrual Rate
9. Easter Holiday
10. Management Rights
11. Retention of Benefits

At the hearing, the undersigned was advised that Issue 5, Weekend Differential, and Issue 11, Retention of Benefits, had been resolved to the mutual satisfaction of the parties. Accordingly, the remaining nine (9) issues are discussed and decided in the order presented.

## **II. ISSUES SUBJECT TO INTEREST ARBITRATION**

### **ISSUE 1. DURATION**

#### **Union's Position**

The Union proposes to modify article 23, Effective Date, of the Collective Bargaining Agreement to provide for a two (2) year contract, effective January 1, 2006 through December 31, 2007. Initially, the Union had proposed a three (3) year contract, with a 3<sup>rd</sup> year wage re-opener and a proviso that in the event of a breakdown in negotiations, the parties would refer the matter to interest arbitration. (Union Tabs – Wages 06, – Wages 07, – Wages 08). It withdrew this proposal. (Employer Exhibit 1).

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<sup>3</sup> The parties only other interest arbitration was in 1993. (Employer Exhibit 26).

The Union's proposal is based on two (2) major considerations. First, few of the parties' set of comparable contracts extend through December 31, 2008, and therefore, comparable settlement data regarding 2008 wage rates and health insurance premiums are simply unavailable.<sup>4</sup> Second, the Employer asserts that any proviso to interest arbitrate a wage re-opener is unenforceable. Nevertheless, in reply, the Union draws a distinction between PELRA and the Charitable Hospital Act, contending that arbitration under a wage re-opener has standing under the latter statute.

### **Employer's Position**

The Employer proposes to modify article 23, Effective Date, of the Collective Bargaining Agreement to provide for a three (3) year contract, effective January 1, 2006 through December 31, 2008. (Employer Exhibits 1 and 27). The Employer notes that it had reached voluntary settlements with its Teamsters, Local 320 Security Officers and IAFF Ambulance Service units that are three (3) years in duration. Moreover, the Hospital asserts that it expects this same outcome when negotiations are concluded with the AFSCME Council 65, General Unit, and AFSCME Council 65, LPN Unit. (Employer Exhibit 28).

The Employer next observes that its internal pattern of three (3) settlements parallels a history of three (3) year settlements with the MNA that goes back to the parties' 1997 round of negotiations. (Employer Exhibit 27). Next, the Employer urges that it conserves resources when all of its bargaining units are on the same bargaining cycle. Finally, the Hospital argues that since most

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<sup>4</sup> The MNA negotiated a 3-year agreement with a hospital in Morris, MN, which expires on December 31, 2008. This contract includes annual 4% wage increases. (Union Tab – Wages 06).

the year 2006 has lapsed, as a practical matter, only two (2) years would remain with a contract of three (3) years in duration; and, citing arbitrator Flagler's 1993 interest arbitration award, *Douglas County and Teamsters, Local 320* (BMS Case No. 93-PN-1074), the Employer urges that short duration awards afford less time for bargaining future terms, and therefore, reduce the prospects of achieving voluntary future settlements.

### **Issue 1. Duration – Award & Rationale**

For the reasons discussed below, a three (3) year Agreement is awarded effective January 1, 2006 through December 31, 2008.

Without compelling reason, interest arbitrators avoid issuing awards that change the fundamental nature of the parties' contractual relationship. Such changes are properly in the domain of voluntary negotiations – not interest arbitration – and the duration article is fundamental to any bargaining pair's relationship.

With respect to this issue, the parties have a history of voluntarily negotiating three (3) year agreements, and the Union did not show that this history has ever been coordinated with the duration cycles in contracts that have been negotiated by externally comparable RN bargaining units. In all likelihood, the parties' have seldom had information about the 3<sup>rd</sup> year wage increases and the 3<sup>rd</sup> year health insurance premiums of externally comparable units. Accordingly, the MNA did not meet the requisite burden of persuasion in regard to this issue.

## **ISSUE 2. WAGES**

### **Union's Position**

The Union proposes to modify article 4, Salary, of the Collective Bargaining Agreement by increasing the January 1, 2005, salaries for RNs as shown in Chart C by 3% effective January 1, 2006, and 6% effective January 1, 2007. (Employers Exhibit 1 and 30, and Union Tabs – Wages 06 – Wages 07). The Union dismisses the Employer's financial concerns, observing that they are self-inflicted, depreciation-based paper losses that prevailed at the time the Employer entered into 3.5% wage increases agreements with the IAFF and Teamsters, Local 320 bargaining units, agreements that also included an increase in "certification" pay and uniform allowance, respectively.

However, the Union's proposed wage increases are mainly premised on the following relevant factors. First, the Union points twenty-two (22) RN 2005 settlements involving the MNA. (Union Tab – Wages 06). However, the record suggests that (1) the Austin, Duluth-St. Luke's, Grand Marais and Marshall were interest arbitrated and not voluntarily negotiated settlements; (2) the Twin Cities LifeLink contract covers a unique "transportation and flight nurse" bargaining unit that is not comparable to the Hospital's unit; and (3) the River Fall's contract is an out-of-state settlement. After deleting these observations, the remaining sixteen (16) settlements are comparable to Rice Memorial Hospital in the limited sense that they are all Minnesota based, unionized private and public facilities, some being financially strapped, that have reached voluntary settlements. The 2006 and 2007 weighted (by months) average wage increase for these bargaining



units is 3.81%, and 3.73% at the minimum end of the salary scale, respectively.<sup>5</sup> The weighted average wage increases computed at the maximum end of the salary scale are similar.

Second, the MNA identifies eleven (11) settlements that it reached during 2006. (Union Tab – Wages 07). Of these, however, the Lakefield, Milaca and Minneapolis Medformation settlements do not cover hospital bargaining units, the Virginia settlement was interest arbitrated, and the State of Minnesota settlement expires on June 30, 2007. Regarding the remaining six (6) contracts, the minimum weighted average 2007 wage increase is 3.99%, and it is slightly higher at the maximum end of the wage scale.

Third, the MNA shows that based on “starting pay”, the Willmar RN have fallen in rank from 36<sup>th</sup>-out-of-75 MNA-represented units across the state in December 2001 to 55<sup>th</sup>-out-of-78 MNA-represented units in December 2005. (Union Tab – Wages 06). The Union urges that the Employer’s wage proposal will insure that the rank order of the Hospital’s RN’s in terms of wage will continue to decline in the future.

Fourth, with respect to 2006 pay at five (5) regional hospitals, the minimum average wage for the Marshall, Alexandria, Montevideo, Worthington and Litchfield facilities is \$22.89 and the maximum average is \$33.60. By comparison, the Employer’s minimum and maximum 2005 wages for RN’s are \$21.83 and \$32.45. To bring the instant unit’s wages up to these minimum and maximum averages of these regional hospitals would require a 2006 wage

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<sup>5</sup> This weighted average is based on thirteen (13) settlements with wage increases for 2007. Moreover, in some of these cases, the relevant percentage wage increases that were used in this calculation are not for a full calendar year.

increase of 4.87% and 3.54%, respectively. In addition, the Union contends that the Employer's position in the labor market for nurses is so poor that in recent months it has lost twenty (20) nurses in one (1) department alone.

Finally, the Union takes umbrage at the Employer's suggestion that its 2006 wages ought to be frozen because internal comparisons dictate as much. The fact that the IAFF and Teamsters, Local 320 settled for a 0% 2006 wage increase is not controlling. There are only 35 and 12 employees, respectively, in each bargaining unit, as compared to the MNA and two (2) AFSCME units, which combined have more than 400 members, and these units have not accepted the Employer-proposed 0% wage adjustment for 2006.

#### **Employer's Position**

The Employer proposes to modify article 4, Salary, of the Collective Bargaining Agreement with general wage increases of 0% in 2006, 3.5% effective January 1, 2007, and 3.5% effective January 1, 2008. (Employer Exhibits 1, 29, 33 and 34). Since step increases range from 2% to 2.7% per year, the Employer notes that its wage proposal sums to a general increase of from 13% to 15.25% over three (3) years. Moreover, since qualifying RNs received their 2006 step increases, their wages actually rose by 2% to 2.7% and not 0% that year. The Hospital supports its wage proposal with evidence designed to show that it is financially unable to pay more than a 0% wage increase in 2006; and that "external" and "internal" comparisons support this position.

First, regarding "ability to pay", CEO Lawrence Massa testified that the Union's 2006 wage proposal of 3% would cost the Employer \$401,847 in

resources it does not have and for which it did not budget. (Employer Exhibit 39). In addition, Mr. Massa reviewed the Employer's financial difficulties, as earlier discussed in the **FACTS AND BACKGROUND** section of this Award. Although the Employer has taken steps to return the hospital to financial health, he testified that 2006 inpatient revenues lag 5% behind budgeted levels, and that admissions, patient days, outpatient revenues, hospice visits, and reimbursement levels from Medicare, Medical Assistance and Blue Cross Blue Shield are lagging. In addition, he testified that fuel costs, PERA expenses and healthcare taxes increased significantly in 2006. (Employer Exhibits 8 and 14). Mr. Massa also testified that none of the Hospital's employees received a wage or salary increase in 2006, including top management. That the Employer is unable to levy taxes, and that it does not receive funds from the City of Willmar, contributes to its inability to pay a 2006 wage increase. CFO William Fenske's testimony supports the overall view that the Employer continues to operate at a deficit.

Second, with respect to external comparisons, the Employer insists that its proposed 2006 – 2008 wage adjustments (including step increases) are competitive with or exceed prevailing market wages for RN's. In making this point the Employer relies on three (3) different data sets, namely: (1) the minimum and maximum average wages of RNs in arbitrator Miller's partial set of thirteen (13) public and private external hospitals that are comparable to Rice Memorial Hospital in terms of geographic proximity, unionization status, number of beds and number of employees;<sup>6</sup> (2) the Medi-Sota, Inc. 2006 survey of mainly

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<sup>6</sup> *Rice Memorial Hospital and Minnesota Nurses Association*, BMS Case No. 93-HN-1159 (Miller, 1993). (Employer Exhibit 26).

southwestern and central Minnesota hospitals; and (3) the Van Norman & Associates 2005 Wage & Salary Survey of Minnesota-based General Duty Staff Nurses. (Employer Exhibits 26, 41, 42, 45, and 47).

Third, the Employer relies heavily on internal comparisons for support of its wage proposal. Relying on arbitral authority, the Employer asserts the importance of making general wage raises that are internally consistent across work groups: to do otherwise would disrupt labor stability and encourage arbitrated outcomes as opposed to voluntarily negotiated agreements, as are envisioned by public policy. Further, the Employer cited arbitral precedence for weighing “internal comparisons” more heavily than “external comparisons” whenever circumstances unique to a bargaining unit’s employer cannot be generalized to the market, such as, when the employer faces unique and serious financial circumstances, as in this case.<sup>7</sup> Accordingly, the Employer notes that its respective 2006, 2007 and 2008 general wage adjustments of 0%, 3.5% and 3.5% have been agreed on by two (2) of the Hospital’s five (5) bargaining units (i.e., the IAFF and Teamsters, Local 320) to date, and that the general wage and salary adjustments for its non-union employees have been set at 0% and 3.5% for 2006 and 2007, respectively, to establish a consistent internal pattern that covers approximately 50% of the Employer’s union and non-union workforce. (Employer Exhibits 32 and 33).

Finally, the Associate Administrator Dale Hustedt testified that only one (1) of the RNs who recently left the Adult Health Department took a nursing job with

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<sup>7</sup> For example, see: *Minnesota Nurses Association and State of Minnesota*, BMS Case No. 04-PN-160 (Bognanno, 2004).

a competitor, refuting the Union's claim that "poaching" is taking place because the Employer is not competitive in the labor market for nurses. Further, Mr. Hustedt notes that the Employer has only one (1) RN vacancy and that it has no problem attracting applicants. In any event, the Employer urges that it has a history of reopening the MNA wage agreement when necessary to remain market competitive. (Employer Exhibits 36 and 37).

### **Issue 2. Wages – Award & Rationale**

For the reasons discussed below, the January 2005 wages as depicted in Chart C of the 2003 – 2005 Agreement shall apply for calendar year 2006. That is, a 0% wage increase is awarded for 2006. Effective January 1, 2007 and January 1, 2008, there shall be general increases of 4% and 5%, respectively.

Interest arbitrators strive to hand down awards that are aligned with their assessment of what the parties themselves would have bargained had their negotiations been successful. To deviate from this standard will have the unintended effect of "chilling" the parties' future negotiations, as the undersigned has written elsewhere. In this case, there are no data in the record that may be used to infer the multiyear percentage wage increases onto which – through the process of reciprocal compromises – the parties were converging before their negotiations reached impasse. Indeed, the record shows that the parties had only three (3), short bargaining sessions before their negotiations broke down. Accordingly, to infer a multiyear wage settlement that the parties might have reached requires that the undersigned examine non-behavioral evidence that has bearing on the Employer's "ability to pay", to the pattern of union settlements

“internal” to the Employer’s enterprise, and to “external” settlements voluntarily reached among similarly situated bargaining units.

With respect to ability to pay, the Employer met its burden by proving that to award a 2006 general wage increase in excess of 0% would create an economic hardship that would fall largely on laid off staff, and on the population of prospective patients for whom they otherwise would provide health care services. The **FACTS AND BACKGROUNDS** section of this Award adequately presents the nature and causes of the Employer’s 2006 financial difficulties, and they need not be repeated here. Further, while 2006 negotiated wage increases for RNs did occur at external hospitals in the immediate region, the import of this phenomenon must be discounted in the face of 2006 internal settlements of 0%, even though the IAFF and Teamsters, Local 320 are relatively small bargaining units. In addition, the fact that the Employer froze the pay of its non-union employees further validates the Hospital’s ability to pay pleading.

To be crystal clear, it is important to observe that while the Employer did prove that it has a 2006 ability to pay problem, it did not make a convincing ability to pay case for the years 2007 and 2008. To be fair, the fact that the Employer proposed a 3.5% general wage increase for each of these years may suggest that it had no intention of making such a case.

The awarded wage increases of 4% and 5% for 2007 and 2008, respectively, flow directly from relevant external wage settlement data that were introduced into the record by the parties. The following discussion and tabular presentations support this point.

**UNION DATA:** The Union offered 2006 and 2007 percentage change wage data for contracts that the MNA negotiated in 2005 and 2006. The undersigned adjusted the number of observations in both data sets, as discussed in the **Union's Position** section of this Award, and then he computed the weighted (by months) average wage increases for the remaining hospitals. These calculations appear in table 1. However, it is important to observe that only 7-out-of-the-16 (adjusted) observations making up the MNA's 2005 comparison group are in arbitrator Miller's cohort of externally comparable hospitals, which the parties acknowledged is the correct cohort; and none of the 6 (adjusted) observations from the MNA's 2006 comparison group are Miller-correct. (See Employer Exhibit 26 for a recitation of the set of hospitals deemed to be comparable to Rice Memorial Hospital). Nevertheless, limited though they are, the statistics in table 1 suggest that wages in the market for hospital nurses are trending upward at nearly 4% in 2006 and 2007.

**Table 1. MNA External Comparison Means**  
[n = number of observations]

<u>MNA 2005 Settlements</u> 2006 (Adjusted n = 16) 2007 (Adjusted n = 13)	<u>Weighted Average Increase (%)</u> 3.81% (minimum; maximum similar) 3.73% (minimum; maximum similar)
<u>MNA 2006 Settlements</u> 2007 (Adjusted n = 6)	<u>Weighted Average Increase (%)</u> 3.99% (minimum; maximum slightly higher)

Source: Union Tabs – Wages 06 and Wages 07.

**EMPLOYER DATA:** Respectively, the Employer offers 2006 and 2007 absolute dollar wage settlement data based on 13 and 8 available agreements or telephone contacts. These RN wage data cover hospitals that are among

arbitrator Miller's comparison cohort. As such, in the opinion of the undersigned, the Employer's data are superior to the Union's because they are a truer reflection of settlements reached at bargaining units that are comparable to Rice Memorial Hospital in regard to geographic proximity, unionization status, number of beds and number of employees.<sup>8</sup>

Using these data, the undersigned computed the average 2006 and 2007 RN wage levels at both the minimum and maximum ends of the salary scale. Then, based on the Employer's proposed minimum and maximum 2006 and 2007 absolute wage levels, the undersigned computed the incremental percentage increases that would be needed for the instant RNs to achieve the market's average rate of wage increase. These calculations appear in table 2. The statistics in this table indicate that the nurse market – defined as the reported percentage wage adjustments among the Employer's comparable hospitals – is trending upward at a rate that far exceeds Employer's proposed 0% for 2006 and 3.5% wage increase for 2007. Assuming a uniform distribution of nurses across the steps in the salary schedule, to maintain market parity the bargaining unit's 2006 and 2007 weighted (by headcount) average percent increase would need to increase by 3.92% and 7.8% (4.3% plus the 3.5% the Employer is proposing), respectively.

As previously discussed, the Employer's ability to pay problem – as manifest in the hospital's economic and operating data, and by the Employer's pattern of internal settlements – led to the instant award of a 0% general wage

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<sup>8</sup> A qualifier is necessary. It may be that Fergus Falls is not in Miller's cohort of comparable hospitals.



**Table 2. Employer's External Comparison Group**  
**[n = number of observations]**

<u>Employer's 2006 Settlements</u>	<u>Percent (%) Increase</u>
2006 (n = 13)	5% (minimum) and 2.84% (maximum) (3.92% w/ uniform distributed of nurses across the salary schedule)
<u>Employer's 2007 Settlements</u>	<u>Percent (%) Increase<sup>(1)</sup></u>
2007 (n = 8)	5.5% (minimum) and 3.1% (maximum) (4.3% w/ uniform distribution of nurses across the salary schedule, <u>plus</u> Employer's 3.5% proposal = 7.8%)

Source: Employer Exhibits 43 and 44.

- (1) Recall that the Employer proposed 2006 and 2007 general wage adjustments of 0% and 3.5%, respectively. Thus, the 2007 percent increases the MNA unit would need to maintain market parity are over and above the 0% and 3.5% that is implicitly incorporated into this analysis.

increase for 2006, even though the 2006 market (weighted) wages for nurses increased by 3.18% and 3.92%, based on the Union's less-comparable and Employer's comparable data, respectively. Therefore, as this analysis suggests, given the awarded 0% increase in 2006 wages, the Employer is currently paying its RNs well below the market's wages, setting up competitiveness problems for 2007 and 2008: problems that would likely have dominated the parties' bargaining of future terms, if such a determination was in their hands. The matter of maintaining consistency with internal settlements, while an important criterion, probably would have faded in significance under these circumstances because the Employer's advocated pattern of future terms would not have been accepted by its three (3) largest bargaining units, namely, the MNA and two (2) AFSCME, Council 65 units.

Balancing this assessment of the external environment against the realistic view that to insure long-term financial recovery, the Employer would have resisted a negotiated wage policy of fully catching-up with the market for nurses in the short-term, the undersigned awards 2007 and 2008 general wage increases of 4% and 5%, respectively. A full market-adjusted wage increase of 7.8% for 2007 is not being awarded. However, for two (2) reasons, a 2008 award of 5% is awarded: an adjustment that the parties might well have reached on their own. First, given this relatively large percentage increment, by 2008 the wages being paid by the Employer will again approximate market parity. Second, since this relatively large wage adjustment is not effective until the last year of a three (3) year agreement, the Employer's finances should be much stronger by then.<sup>9</sup>

### **ISSUE 3. HEALTH INSURANCE**

#### **Employer's Position**

The Employer proposes to modify article 15, Insurance Program, of the Collective Bargaining Agreement effective January 1, 2007 and January 1, 2008, while maintaining the *status quo* with respect to calendar year 2006. The Employer proposes to (a) calculate the 100% single premium contribution on the basis of a \$750 deductible plan for all employees, rather than on the current \$300 deductible plan; and (b) implement a flat dollar contribution formula for new

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<sup>9</sup> Because the Employer's "best" comparison evidence is that found in Employer Exhibits 43 and 44, the undersigned gave only scant consideration to the Medi-Sota, Inc. and Van Norman & Associates exhibits.

employees hired on or after January 1, 2007. (Employer Exhibits 50, 51 and 52).

The language modifications reflecting these proposed changes are as follows:

The Hospital will pay the full cost of the single subscriber hospitalization insurance for each nurse regularly scheduled to work a minimum of forty (40) hours per pay period for benefits not less than those provided by the insurance coverage currently in effect.

Effective ~~July 1, 2003~~ January 1, 2006, the Hospital shall provide and contribute up to one hundred twenty-five dollars (\$125.00) per month toward single plus one coverage for all eligible nurses as defined in the previous paragraph. Any additional cost shall be paid by the nurse through payroll deduction.

Effective January 1, 2006, the Hospital shall provide and contribute up to one hundred thirteen dollars (\$113.00) one hundred fifty dollars (\$150.00) per month toward family coverage for all eligible nurses as defined in the previous paragraph. Any additional cost shall be paid by the nurse through payroll deduction. Effective July 1, 2003, this Hospital contribution shall be increased to one hundred fifty dollars (\$150.00) per month.

Effective January 1, 2007, the Hospital shall pay the total cost for single coverage of the \$750 deductible plan for all eligible employees hired prior to January 1, 2007. Employees who choose the \$300 deductible plan shall receive the same dollar amount the Hospital is contributing to those on the \$750 deductible plan. For employees hired on or after January 1, 2007, the Hospital shall pay \$375 per month toward single coverage for all eligible employees. The Hospital shall contribute \$610 per month toward the total premium cost for single-plus-one coverage for all eligible employees, and the Hospital shall contribute \$690 per month toward the total premium cost for family coverage for all eligible employees. Any additional cost shall be paid by the employee through payroll deductions.

Effective January 1, 2008, the Hospital shall pay the total cost for single coverage of the \$750 deductible plan for all eligible employees hired prior to January 1, 2007. Employees who choose the \$300 deductible plan shall receive the same dollar amount the Hospital is contributing to those on the \$750 deductible plan. For employees hired on or after January 1, 2007, the Hospital shall pay \$400 per month toward single coverage for all eligible employees. The Hospital shall pay \$650 per month toward the total premium cost for single-plus-one coverage for all eligible employees, and the Hospital shall contribute \$735 per month toward the total premium cost for family coverage for all eligible employees. Any additional cost shall be paid by the employee through payroll deduction.

(Employer Exhibit 1, article 15).

In support of the above-quoted modification, the Employer notes first that its IAFF Ambulance Service unit's and the Teamsters, Local 320 Security Officers unit's 35 and 12 members, respectively, are presently covered by the proposed health insurance program, and so too are the Hospital's 382 non-union represented employees. (Employer Exhibit 54). At present, therefore, the proposed program already covers almost one-half (1/2) of the Employer's total workforce.

Second, the Employer points to the well-established interest arbitration precedence that health insurance is among the class of employee "benefits" that invites heavy reliance on internal comparisons.

Next, the Employer observes that as a general matter, changing conditions in the medical marketplace are forcing employers to shift some of their rising health insurance premium bills onto employees. Implicitly, this explains why the Employer proposes to calculate its 100% single premium contribution on the basis of a \$750 deductible plan for all employees hired before January 1, 2007. The Employer anticipates that this specific modification will create an incentive for employees to move to the higher, \$750 deductible plan. Moreover, for all employees hired on or after January 1, 2007, rather than paying 100% of single, 100% of single-plus-\$125.00 for single plus one, and 100% of single-plus-\$150 for family coverage, the Employer proposes paying flat dollar contribution amounts: another cost-shifting feature. (Employer Exhibits 50, 51 and 52).

### **Union's Position**

With respect to article 15, the Union's proposes preservation of the *status quo*. In doing so, the Union points out that the Employer's proposed modifications to the health insurance program will result in a two-tier program based on an employee's date of hire. For employees hired on or after January 31, 2007, the Employer's premium contributions are capped at specific flat dollar amounts; and all employees are being economically coerced to enroll in the higher \$750 deductible plan.

Next, the Union points out that the Employer's two-tier insurance program is unique among comparable hospitals. (Union Tab – Health Insurance). Finally, the Union challenges the Employer's view that it has established a credible pattern of internal settlements.

### **Issue 3. Health Insurance – Award & Rationale**

For the reasons discussed below, the Employer-modified language in article 15, Insurance Program, is awarded. In issuing this award, the undersigned is very cognizant of the interest arbitration standard that, absent compelling support, fundamental innovations in contract-based policies are the preserve of the parties, not arbitrators. On the other hand, the undersigned is also cognizant of the axiom that interest awards ought to be consistent with settlements that the parties might have reached, if their negotiations had not broken down.

Ultimately, in deciding this issue, the latter axiom dominates the former standard. It is the case that health insurance programs are at the forefront of contemporary labor relations, and that the prevailing innovations in these

programs have to do with cost-shifting and other strategies aimed at rationing health care utilization. The Employer's proposal incorporates cost-shifting, but its more dramatic change has to do with a prospective shift in cost-bearing that will fall heaviest on employees who are yet to be hired. The Employer is proposing a two-tier system.

The Hospital's IAFF and Teamsters, Local 320 bargaining units accepted the Employer's health insurance proposal, incorporating same into their 2006 – 2008 Collective Bargaining Agreements. But, as the Union argues, these are relatively small bargaining units in comparison to the Hospital's other three (3) units with whom it has yet to reach negotiated settlements. Nevertheless, the undersigned takes notice of the fact that all of the Hospital's non-union workers are also covered by this health insurance innovation. Thus, slightly less than one-half (1/2) of the Employer's total workforce is now under the modified insurance program, and it is difficult to find that the MNA and two (2) AFSCME units would not follow suit given the present health insurance environment, and the Employer's interest in finding operating economies.

Moreover, the Employer correctly argues that interest arbitration precedence favors the application of the internal comparison standard in regard to matters like health insurance. Basically, the referenced arbitral view is that the broader the reach of a health program across workgroups, the greater will be the economic and coverage benefits to individual participants because of risk pooling and economies of scale. In this case, it is clear that the Employer's proposed health insurance program is expanding across workgroups, union and non-union.

The consistency of this unfolding internal pattern has more to say about the direction the parties' negotiations were heading than does the array of different health insurance policies that exist in the external marketplace for nursing services. It can confidently be said that each of the external units' health insurance plans is unique. (Employer Exhibit 55 and Union Tab – Heath Insurance).

**ISSUES 4, 6, 7, 8 AND 9. ON-CALL PAY, ACCESS TO EST, CONVERSION OF EST TO PTO AND EST MAXIMUM, PTO ACCRUAL RATE AND EASTER HOLIDAY, RESPECTIVELY**

**Union's Positions**

Issue 4. On-Call Pay: The Union proposes modification of article 4, Salary, section E, which provides for on-call pay. Specifically, the Union proposes that effective January 1, 2007, the current pay for on-call duty be increased from \$3.50 per hour to \$6.15 per hour, the legal minimum wage rate in Minnesota.

Issue 6. Access to EST: The Union proposes modification of article 6, Paid Time Off Plan, section G, which provides for extended sick time (EST). Specifically, the Union proposes that effective January 1, 2007, the number of days of paid time off (PTO) that is taken for injury and illness absences before EST can be used be reduced from four (4) to three (3).

Issue 7. Conversion of EST to PTO and EST Maximum: The Union proposes modification of article 4, Salary, section G, which permits nurses to accumulate up to a maximum of 800 hours of EST. Specifically, the MNA proposes that effective January 1, 2007, RNs may convert any hours beyond the EST maximum of 800 hours to their PTO banks.

Issue 8. PTO Accrual Rate: The Union proposes modification of article 6, Paid Time Off Plan, section C, which provides a schedule of rates at which nurses earn PTO by length of service and number of regular hours worked. Specifically, the Union proposes that effective January 1, 2007, the “After 25 Years” of continuous service dimension of the schedule should be changed to “After 10 Years”.

Issue 9. Easter Holiday: The Union proposes modification of article 6, Paid Time Off Plan, section D, paragraph 2, which provides for PTO for holidays. The Union specifically proposes to add Easter to the list of PTO holidays, effective January 1, 2007.

The Union relies on external comparisons to make its case for modifying the on-call pay part of article 4, Salary of the Collective Bargaining Agreement. The current on-call pay rate is compared to that of five (5) Miller-correct hospitals whose average hourly on-call rate of pay is \$3.62 *versus* Rice Memorial Hospital's rate of \$3.50. Whereas, the Union points out that the parties' PTO plan has been a subject of bargaining for years; in 1999, the PTO plan was implemented on a trial basis; and in 2003, it was incorporated into the Collective Bargaining Agreement. The Union proffered revised Paid Time Off Plan language designed to incorporate its several PTO-related proposals. (Union Tabs – On-Call and PTO).

#### **Employer's Positions**

Issue 4. On-Call Pay: The Employer proposes no change to article 4, Salary, section E, as it relates to on-call pay.



Issue 6. Access to EST: The Employer proposes no change to article 6, Paid Time Off Plan, section G, in regard to the requirement that the first four (4) days of an injury or illness absence would come out of the PTO bank before it may be taken from the EST bank.

Issue 7. Conversion of EST to PTO and EST Maximum: The Employer proposes modification of article 4, Salary, section G, which permits nurses to accumulate up to a maximum of 800 hours of EST. Specifically, the Employer proposes capping the maximum accrual of EST hours at 600 for employees hired on or after January 1, 2007.

Issue 8. PTO Accrual Rate: The Employer proposes modification of article 6, Paid Time Off Plan, section C, which provides a schedule of rates at which nurses earn PTO by length of service and number of regular hours worked. Specifically, the Employer proposes reducing the PTO accrual schedule by four (4) days per year for new employees hired on or after January 1, 2007.

Issue. 9. Easter Holiday: The Employer proposes no change to article 6, Paid Time Off Plan, section D, paragraph 2, which provides for PTO for holidays.

With respect to on-call pay, the Employer relies on the previously referenced thirteen (13) external comparison hospitals for data supporting maintenance of the *status quo*. The external comparative average hourly on-call rate of pay is \$4.23 – not \$6.15. As for maintaining the *status quo* in regard to Access to EST and Easter Holiday, and the partial maintenance of the *status quo* regarding the Conversion of EST to PTO and EST Maximum issue, the Employer notes that the parties' Paid Time Off Plan is a hospital-wide plan

applicable to all internal workgroups, and that under this plan and its administration all employees are required to use four (4) days of PTO before they may access EST; no employees receive Easter as a paid holiday; and no employees are allowed to convert hours beyond the 800 hours EST maximum to their PRO accrual banks. (Employer Exhibits 68, 70, 72, 73 and 74). Moreover, the Employer observes that when the parties negotiated their conversion to the PTO program, the MNA agreed to eliminate Good Friday or Easter as a holiday in exchange for the additional "After 25 Years" on the PTO accrual schedule. (Employer Exhibit 72). Finally, in opposition to all of the Union's proposed modifications to articles 4 and 6 of the Collective Bargaining Agreement, the Employer argues that each proposal will be costly, and given the Hospital's financial difficulties new expenses ought not be incurred presently. (Employer Exhibits 67, 69 and 75).

In support of its proposals to reduce the maximum accrual of EST hours from 800 to 600 for employees hired after January 1, 2007, and to reduce the PTO accrual schedule by four (4) days per year, the Employer points out that these modifications will only affect newly hired employees, and they are consistent with changes negotiated with the IAFF and Teamsters, Local 320. In addition, the Employer continues, these proposals will become effective after January 1, 2007, for all of its non-union employees. (Employer Exhibits 64 and 71). Further, the Employer asserts that PTO "benefits", like health insurance "benefits", should be subject to the standard of internal consistency.

**Issues 4, 6, 7, 8, and 9. On-Call Pay, Access to EST, Conversion of EST to PTO and EST Maximum, PTO Accrual Rate, and Easter Holiday – Awards & Rationale**

After carefully reflecting on the parties' diverging positions on each of these issues and their supporting evidence, the undersigned combines the issues for joint discussion and determination because the award for each is the same, namely, the preservation of the *status quo anti*.

The Union's case for increasing pay for on-call duty from \$3.50 to \$6.15 is simply not supported by data bearing on external comparisons, which is the controlling standard for this issue. Indeed, neither Union nor Employer external data even remotely suggest that to award \$6.50 per hour for on-call duty would be consistent with the labor market's valuation of same. Thus, on-call pay shall remain at the \$3.50 level for the duration of the 2006 – 2008 Collective Bargaining Agreement.

With regard to the Union's package of PTO and Easter Holiday issues, the record is void of supporting documentation. The PTO plan was first incorporated into the parties' 2003 – 2005 Agreement, following extensive negotiations and a period of trial application. Remarkably, the Union offers little or no support for its PTO proposals in the form of either internal or external comparisons. In fact, the undersigned presumes that the Union proposals in question were made in response to the Employer's proposals to (1) lower the PTO accrual rates for new RNs hired on or after January 1, 2007, and (2) reduce the cap on the maximum accrual of EST hours from 800 to 600 hours for new nurses. That is, they were

made as a *quid pro quo*. To repeat, acceptable grounds for supporting the Union's proposed contractual modifications are not in evidence.

With respect to the Employer's proposals PTO modifications to the Agreement, the undersigned is reluctant to award *via* interest arbitration contractual changes that otherwise would not have resulted *via* negotiations. As much as the Employer intended to bargain for its PTO modifications, the MNA intended to bargain for different PTO modifications of its own, as previously discussed. Thus, it is unlikely that the Employer would have prevailed at the bargaining table without agreeing to concede to the MNA in regard to its PTO issues or some others.

The Employer argues that its proposals to lower the PTO accrual rates and to lower the maximum accrual of EST hours from 800 to 600 for new nurses are policy changes that have already been negotiated with its two (2) smallest bargaining units, and that will take effect among its non-union employees after January 1, 2007. However, this internal comparisons argument is not persuasive in this case. PTO "benefits" are not akin to health insurance "benefits" in the sense that "internal comparisons are the preferred guide for judging likely bargaining outcomes. Indeed, PTO benefits, which can be thought of as a bundle of paid vacations, holidays, sick leave and other forms of leave benefits, often differ among workgroups or occupations in systematic ways and, thus, they beg for external comparisons. In fact, even within Rice Memorial Hospital the PTO accrual schedule of RNs is different from the PTO accrual schedule of other hospital employees.

Ultimately, the undersigned concludes that the parties would not have bargained the two-tier modifications to articles 4 and 6 of the Collective Bargaining Agreement, other things held constant. Accordingly, the Employer's proposed modifications to articles 4 and 6 are denied and the language in question shall remain unchanged.

## **ISSUE 10. MANAGEMENT RIGHTS**

### **Employer's Position**

The Employer proposes adding a Management Rights article to the Agreement, offering language that is identical and similar to that found in the Hospital's AFSCME LPN contract and in its other agreements, respectively. Further, the Employer's proposed language is similar to the statutory definition of "inherent managerial policy", which is incorporated by reference in the Charitable Hospital Act. (Employer Exhibit 76).

Next, the Employer points out that management rights language has been incorporated into the Hospital's other contracts for a number of years, and these clauses have never been the subject of a grievance or arbitration. (Employer Exhibit 76)

Finally, the Hospital offered external data to show that management rights language is incorporated into the agreements of five (5) out of twelve (12) Miller-correct public hospitals. (Employer Exhibit 77).

### **Union's Position**

The Union proposes that a Management Rights clause not be added to the Collective Bargaining Agreement. To begin, the Union observes that adding

such a clause is duplicative of the recent revisions to the Charitable Hospital Act, Minn. Stat. §179.38, which incorporates the definitions of “terms and conditions of employment”, Minn. Stat. § 179A.03, subd.19, and “inherent management rights”, Minn. Stat. § 179A.07, for public employers.

Next, the MNA notes that it is uncommon for professionals, like RNs, to incorporate management rights clauses into their labor agreements. In this regard, the Union shows that the following five (5) Miller-correct facilities do not have such a clause in their RN agreements: Montevideo, Litchfield, Marshall, Alexandria and Worthington. (Union Tab – Management Rights).

Finally, the Union identifies the proposed Management Rights Clause as language that could prospectively clash with the dictates of the Minnesota Nurse Practice Act, Minn. Stat. § 148.171, *et seq*, which viewed as the profession’s governing document with respect to nursing practice. (Union Exhibit 2).

#### **Issue 10. Management Rights – Award & Rationale**

For the reasons discussed below, the Employer-proposed Management Rights article shall not be incorporated into the Agreement. First, as previously suggested, absent compelling support, interest arbitrators are not inclined to use their authority to alter the fundamental architecture of labor contracts. If this were not the case, interest arbitrators would “chill” collective bargaining and invite interest arbitration abuse. In addition to Management Rights clauses, the undersigned considers “No Strike”, “Subcontracting”, “Zipper” and similar clauses as being illustrative of clauses that are “fundamental” to the labor agreement.

Second, the Employer has relied on its “implied” and “statutory” managerial rights in its dealing with the Union for several years, so why the proposed change? A careful review of the record evidence does not identify any specific circumstances that compelled the Employer to bring forward the instant proposal. This suggests that the Employer may have hoped that the instant proceedings would have served as the vehicle for achieving contract language that it would not have been able to achieve through bilateral negotiations without trade-offs.

Finally, the undersigned is struck by the fact that so many MNA agreements do not include a Management Rights article: 7-out-of-12 does not have such language. (Employer Exhibit 77). This is new knowledge and it suggests that there is something unique about the nursing profession that must be in play. In any event, external, not internal, comparisons guided decision-making with respect to this issue.

Issued and ordered on the 30<sup>th</sup>  
day of December 2006, from  
Tucson, Arizona.

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Mario F. Bognanno, Arbitrator